

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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GLAXO GROUP LIMITED, :
: Plaintiff, :
: v. : Civ. No. 04-171-KAJ
: :
TEVA PHARMACEUTICALS USA, INC., :
and TEVA PHARMACEUTICAL :
INDUSTRIES, LIMITED, :
: Defendants. :
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JOINT APPLICATION TO MODIFY SCHEDULING ORDER

Counsel for Plaintiff, Glaxo Group Limited (“Glaxo”), and counsel for defendants, Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries Limited (“Teva”), jointly submit this application to modify the scheduling order in this action.

1. This is an action for patent infringement under the Hatch-Waxman Act, 35 U.S.C. § 271(e)(2). The Court may recall that at the recent status conference held by telephone on October 7, 2005, the parties raised a number of discovery issues that needed to be resolved and expressed an interest in presenting summary judgment motions to the Court to decide the issue of infringement. The parties have been working diligently to resolve our discovery disputes and to complete the remaining depositions, including experts. Despite the parties’ best efforts, the deposition of a 30(b)(6) witness designated by Teva had to be rescheduled unexpectedly due to the recent location and production of approximately 2000 very technical and relevant documents by Teva. This has thrown off the schedule for completing the fact depositions and affirmative expert reports, currently scheduled to be served on December 19, 2005. The parties have had

extensive communications to narrow the issues in dispute and to schedule the remaining depositions that are necessary prior to the submission of *Markman* briefs and dispositive motions, which we believe necessitates a modification to the current scheduling order.

2. Plaintiff's claim is for patent infringement pursuant to the doctrine of equivalents. Defendants have stipulated that the accused product contains all of the elements of claims 1-11 of the patent-in-suit, U.S. Patent No. 5,068,249 ("the '249 patent"), except the following:

- (1), "a stabilizing effective amount of ethanol" in Claims 1 through 10;
- (2), "2.5 percent to 10 percent weight/volume ethanol" in claim 2;
- (3), "7 percent to 8 percent weight/volume ethanol" in Claims 3, 11 and 12.

Transcript of June 30, 2005 Telephone conference at p. 5:3-25. The parties, therefore, have significantly limited the infringement issues in dispute and believe that summary judgment will either resolve the case entirely or further limit any issues remaining for trial.

3. The parties jointly request a 90-day extension of the current schedule to allow this case to be presented to Your Honor for claim construction and summary judgment rulings in a prompt but thorough manner. We recognize that this proposal would require the Court to reschedule the current trial date set for August 14, 2006, but in agreeing to narrow the issues, the parties are hopeful that we can persuade Your Honor to grant our proposed extension. We enclose (as Exhibit A hereto) a proposed Stipulation and Order to modify the Scheduling Order. We are available at Your Honor's convenience to answer any questions that Your Honor may have, and we thank Your Honor for your consideration of this matter.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Francis DiGiovanni, hereby certify that on December 12, 2005, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following, and I further certify that I have served via Hand Delivery a copy of said document to:

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I hereby certify that on this same date, I have mailed by United States Postal Service, the document(s) to the following counsel:

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